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Geelhoed, Willem

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Netherlands

Country profile on penalties in drug trafficking cases in the Netherlands

Written by Willem Geelhoed

General information on penalties in drug trafficking cases

The Dutch *Opiumwet* defines drug offences and penalty levels, depending on how dangerous the substances involved are, as defined in schedule I (most dangerous) and schedule II (less dangerous). Offences are defined in articles 2 (schedule I) and 3 (schedule II): (a) import or export; (b) cultivation, preparation, processing, sale, delivery, distribution and transport; (c) possession; (d) manufacture.

Maximum financial penalties are categorised in article 23 CC: (1) EUR 390; (2) EUR 3 900; (3) EUR 7 800; (4) EUR 19 500; (5) EUR 78 000; (6) EUR 780 000. Legal entities can be sentenced to a financial penalty of one category higher than the maximum specified in the offence; the same counts for both individuals and legal entities when the value of trafficked drugs is more than one quarter of the maximum financial penalty (article 12).

For schedule I offences (article 10, 10a) penalty levels are as follows. All offences are punishable as a misdemeanour with a maximum of six months' imprisonment or a fourth category fine, without requiring intent. Intentional possession is punishable by a maximum of six years' imprisonment or a fifth category fine. Intentional manufacture, cultivation etc. (defined as (b)/(d) offences) is punishable by a maximum of eight years' imprisonment or a fifth category fine. Intentional import or export is punishable by a maximum of twelve years' imprisonment or a fifth category fine. Preparing or promoting any intentional behaviour except possession is punishable by a maximum of six years' imprisonment or a fifth category fine.

For schedule II offences (article 11) penalty levels are as follows. All offences are punishable as misdemeanour with a maximum of one month's imprisonment or a second category fine, without requiring intent. Intentional import or export is punishable a maximum of four years' imprisonment or a fifth category fine; all other intentional behaviour is punishable by a maximum of two years' imprisonment or a fourth category fine.

Participation in a criminal organisation with the aim of trafficking drugs is punishable by a maximum of eight years' imprisonment or a fifth category fine (article 11b).

Committing intentional (b)-type schedule II offences (sale, distribution of cannabis, etc.) in the execution of a profession or a business is an aggravating circumstance, punishable by up to six years' imprisonment or a fifth category fine. Committing any intentional offence with a 'large quantity' of schedule II substances is punishable by up to six years' imprisonment or a fifth category fine. Preparing or promoting schedule II offences that take place in a profession or a business, or that relate to large quantities is punishable by a maximum of three years' imprisonment or a fifth category fine (article 11a). There is no specific aggravating circumstance relating to the harm substances may cause.

Import, export or possession of a schedule I substance, when it relates to a small quantity that is intended for personal use by the offender, is a mitigating circumstance, punishable by up to one year's imprisonment or a third category fine. All schedule II offences regarding cannabis or hash to a

maximum of 30 g (without a personal use requirement) are only punishable as a misdemeanour. All offences regarding schedule II substances except cannabis and hash, if they concern small quantities and the substances are intended for personal use by the offender, are only punishable as a misdemeanour.

The Prosecution's guideline (*Aanwijzing Opiumwet*, 13 December 2012) is binding, but prosecutors can deviate from it if they state their reasons. For reasons of public health and public order, the guideline tolerates some offences and gives less priority to other. Licensed cannabis sales outlets, known as 'coffee shops,' will not be prosecuted when they adhere to these criteria: no advertising, no sale or supply of schedule I substances, no public nuisance, no sale to or entry for juveniles, no sale or supply of large quantities, and no entry for and no sale to people not resident in the Netherlands. Local policies can diverge from this. Mayors have the power to close a coffee shop (article 13b).

The courts' guidelines (*Oriëntatiepunten straftoemeting*) are non-binding. There are three separate guidelines for three different types of drug offences. For 'importing and exporting schedule I substances', the guideline attaches importance to the weight of the substance and whether the offender acted as a member of an organisation or not. For 'selling small quantities of schedule I substances from a house or on the street' weight is irrelevant, but the duration of dealing is not. For selling for less than a month the lowest sentence should be imposed; the highest is imposed for selling for more than six months. For 'more or less professionally cultivating cannabis plants', the sentence depends on the number of plants within three ranges: 50–100, 100–500 or 500–1 000.

Scenarios: prescribed and expected sentences

The legislation outlined above indicates the sentence ranges that are prescribed for supply of defined quantities of particular drugs in certain circumstances. It must be remembered that several factors are involved in calculating the sentence, and the penalties listed here assume no duration of dealing and no organisational capacity — if these were found, the penalties would be considerably higher.

Two judges, two prosecutors and a defence lawyer were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results are summarised in the table below.

Early release in drug trafficking cases

For sentences over two years' imprisonment, early release is available after two thirds of the sentence has been served. For sentences of more than one year, but less than two years, early release is available after imprisonment of more than one year and a third of the remainder (article 15 CC). Early release is applicable to all drug offences. The non-executed part of a sentence can be executed in cases of non-compliance with conditions, e.g. prohibition of drug use and complying with inspections. Early release is very likely for unconditional imprisonment of more than one year. Below that limit, early release is not possible or very unlikely.

As the practitioners generally expected sentences of less than one year's imprisonment to be applied, no early release would be available in these scenarios, and therefore the offender would be incarcerated for the full sentence mentioned above when the sentence was not suspended.

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Cannabis resin (10 % THC)	1 kg	Prosecution guidelines: 97 days' imprisonment (for commercial sale of this amount) Court guidelines: only specify sanctions depending on the number of cannabis plants, not on the weight of cannabis resin (Law: imprisonment up to 6 years or fine up to EUR 78 000)	100 hours' community service (judge 1) 120 hours' community service and 1 month's conditional imprisonment (judge 2) 3 months' imprisonment (prosecutor 1) 1 month's imprisonment (prosecutor 2) A fine and 40 hours' community service (defence lawyer)	Median incalculable
	10 kg	Prosecution guidelines: 281 days' imprisonment (for commercial sale of this amount) Court guidelines: only specify sanctions depending on the number of cannabis plants, not on the weight of cannabis resin (Law: imprisonment up to 6 years or fine up to EUR 78 000)	240 hours' community service (judge 1) 180 hours' community service and 2 months' conditional imprisonment (judge 2) 9 to 10 months' imprisonment (prosecutor 1) 4 to 5 months' imprisonment (prosecutor 2) 180 hours' community service and conditional imprisonment (defence lawyer)	Median incalculable
Amphetamine (20 % purity)	100 g	Prosecution guidelines: 8 months' imprisonment (for sale of this amount) Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month) Court guidelines (for importing or exporting): 7 weeks' imprisonment (Law: imprisonment up to 8 years or fine up to EUR 78 000)	7 weeks' imprisonment (judge 1) 2 months' imprisonment (judge 2) 5 months' imprisonment (prosecutor 1) 3 months' imprisonment (prosecutor 2) 80 hours' community service (defence lawyer)	2 months' imprisonment

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Amphetamine (20 % purity)	1 kg	Prosecution guidelines: 22.5 months' imprisonment (for sale of this amount) Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month) Court guidelines (for importing or exporting): 8 months' imprisonment (Law: imprisonment up to 8 years or fine up to EUR 78 000)	8 months' imprisonment (judge 1) 3 months' imprisonment (judge 2) 18 months' imprisonment (prosecutor 1) 8 months' imprisonment (prosecutor 2) 3 months' imprisonment (defence lawyer)	8 months' imprisonment
Cocaine (33 % purity)	100 g	Prosecution guidelines: 8 months' imprisonment (for sale of this amount) Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month) Court guidelines (for importing or exporting): 8 months' imprisonment (Law: imprisonment up to 8 years or fine up to EUR 78 000)	7 weeks' imprisonment (judge 1) 2 months' imprisonment (judge 2) 5 months' imprisonment (prosecutor 1) 3 months' imprisonment (prosecutor 2) 3 months' imprisonment (defence lawyer)	3 months' imprisonment
	1 kg	Prosecution guidelines: 22.5 months' imprisonment (for sale of this amount) Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month) Court guidelines (for importing or exporting): 8 months' imprisonment (Law: imprisonment up to 8 years or fine up to EUR 78 000)	8 months' imprisonment (judge 1) 3 months' imprisonment (judge 2) 18 months' imprisonment (prosecutor 1) 8 months' imprisonment (prosecutor 2) 12 months' imprisonment (defence lawyer)	8 months' imprisonment

Substance	Weight	Penalty range prescribed in law/guidelines	Expected penalty range (sentence)	Median expected penalty (sentence)
Heroin (25 % purity)	100 g	Prosecution guidelines: 8 months' imprisonment (for sale of this amount) Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month) Court guidelines (for importing or exporting): 8 months' imprisonment (Law: imprisonment up to 8 years or fine up to EUR 78 000)	7 weeks' imprisonment (judge 1) 2 months' imprisonment (judge 2) 5 months' imprisonment (prosecutor 1) 3 months' imprisonment (prosecutor 2) 3 months' imprisonment (defence lawyer)	3 months' imprisonment
	1 kg	Prosecution guidelines: 8 months' imprisonment (for sale of this amount) Court guidelines (for selling user quantities from house or on the street): 3 months' imprisonment (if selling for less than 1 month) Court guidelines (for importing or exporting): 8 months' imprisonment (Law: imprisonment up to 8 years or fine up to EUR 78 000)	8 months' imprisonment (judge 1) 3 months' imprisonment (judge 2) 18 months' imprisonment (prosecutor 1) 8 months' imprisonment (prosecutor 2) 12 months' imprisonment (defence lawyer)	8 months' imprisonment